

In the United States Court of Appeals  
for the Ninth Circuit

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BABETTA SCHMIDT, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

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On Petition for Review of the Decision of the  
Tax Court of the United States

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BRIEF FOR THE RESPONDENT

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No. 15712

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**BRIEF FOR THE RESPONDENT**

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**OPINION BELOW**

The opinion of the Tax Court is reported in 28 T.C. No. 38. (R. 93-102).

**JURISDICTION**

The petition for review (R. 104-106) involves federal income taxes for the taxable year 1945 and additions to tax for taxable years 1945, 1946, 1947, 1948 and 1951. On June 30, 1954, the Commissioner of Internal Revenue mailed to the taxpayer notice of deficiencies in the total amount of \$1,977.05 and additions to tax in the amount of \$989.31. (R. 5,

11.) Within 90 days thereafter and on September 27, 1954, the taxpayer filed a petition with the Tax Court for a redetermination of the deficiencies under the provisions of Section 272 of the Internal Revenue Code of 1939. (R. 3, 5-8, 33-36.) The decision of the Tax Court was entered on August 5, 1957. (R. 103.) The case is brought to this Court by a petition for review filed August 14, 1957. (R. 104-106.) Jurisdiction is conferred on this Court by Section 7482 of the Internal Revenue Code of 1954.

### QUESTIONS PRESENTED

1. Whether the Tax Court correctly decided that it had no jurisdiction to determine whether taxpayer's alleged overpayment for 1944 should be applied against a deficiency owed for 1945, taxpayer having petitioned for review of Commissioner's deficiency determination for 1945 but not for 1944.

2. Whether the record warrants the Tax Court's determination that taxpayer's failure to file timely individual income tax returns for the years 1945 through 1948 and 1951 was not due to reasonable cause, and that therefore taxpayer is subject to the penalty prescribed in Section 291(a) of the Internal Revenue Code of 1939 for failure to file timely returns.

### STATUTES INVOLVED

The pertinent provisions of the Statutes involved are set forth in the Appendix, *infra*.

## STATEMENT

The facts as found by the Tax Court, based upon stipulation of facts between counsel and testimony introduced at the trial, can be summarized as follows (R. 94-97):

Taxpayer was born in Germany in 1874 and came to the United States prior to 1900. She has been a widow since 1939. Since that time she has received rents from certain property but has not engaged in any other business activity. (R. 94.) Although taxpayer did not have the ability to prepare income tax returns, she was well aware of her obligation to file returns. Prior to the death of her husband she received assistance from the local Internal Revenue Bureau office in preparing returns. About 1932 taxpayer retained a man who held himself out as an accountant for the purpose of preparing her tax returns. Taxpayer was advised by her sons to do so. The sons had employed the accountant from 1930 to 1951. Taxpayer employed the accountant from 1932 until 1952. (R. 95.)

The accountant was never certified nor licensed under the laws of the State of California. Nevertheless, he held himself out to be a tax consultant, auditor and public accountant through 1953. Since 1937 the State of California requires licensing of public accountants. (R. 95.) Taxpayer would call the accountant by telephone and request him to come to her house to prepare the income tax return. The income tax information was contained in an account



book and recorded therein by either taxpayer or her daughter. The account book adequately reflected receipts, disbursements and other information necessary to prepare income tax returns. In addition the accountant also requested oral information concerning certain matters. The accountant would take the information from the taxpayer and later return with the papers for her to sign. His fees averaged about \$200 per year for the income tax service rendered the taxpayer. The accountant prepared income tax returns for the taxpayer through 1943. He left the returns with her and she filed them within the prescribed time. In addition, for each of the years 1944, 1946 and 1948 through 1951 he prepared the forms relating to the declaration of estimated tax, which taxpayer signed and timely filed. Taxpayer made payments with each tax declaration that was filed. (R. 95-96.)

Taxpayer failed to file timely tax returns for 1944 through 1949 and 1951. Sometime in 1952 the accountant brought returns for taxable years 1944 through 1949 and also 1951 to her residence for signature. The reason offered for the delay in the preparation of the returns was the illness of the accountant. The accountant presented taxpayer with a \$500 invoice for services, which taxpayer refused to pay upon the advice of her son. The accountant assured taxpayer and her son that they need not worry if they paid the tax due on the returns. He obtained an extension of time for filing the return for 1950 only. (R. 96.) Attached to each return was an affidavit prepared for the taxpayer by the accountant which



stated that the delay in filing "was not due to any intent on my [taxpayer's] part to hinder, delay, defraud, evade, or avoid taxation, but was due to the prolonged illness of my accountant." (R. 96.)

On June 30, 1952, the taxpayer filed her delinquent income tax returns for 1944 through 1949 and 1951 with the Collector of Internal Revenue for the First District of California. Her 1950 return was timely filed on August 15, 1951, in accordance with an extension of time granted for that year only. The Commissioner determined deficiencies, and additions to tax for failure to file timely returns, for years for which delinquent returns were filed. (R. 96-97.)

The taxpayer's declaration of estimated tax for 1944 showed an estimated liability of \$2,473. She paid this amount in four equal quarterly payments, the last payment being January 4, 1945. The 1944 income tax return, delinquently filed on June 30, 1952, stated that taxpayer owed no taxes for that year and requested that the \$2,473 be applied against her 1945 estimated tax. She had never filed a declaration of estimated tax for 1945 and nobody acting in her behalf had done so. (R. 97.)

The 1945 income tax return, filed delinquently on June 30, 1952, showed the \$2,473 as a payment on 1945 declaration of estimated tax, thereby reducing the income tax liability for that particular year. The Commissioner has not allowed any part of the \$2,473 in satisfaction of taxpayer's income tax liability for 1945 or any year subsequent thereto. The Commissioner applied a portion of the \$2,473 to pay the con-

ceded deficiency determined for taxable year 1944. (R. 97.)

The Tax Court found that taxpayer's failure to file timely returns for the taxable years in question was not due to reasonable cause. (R. 97.)

### SUMMARY OF ARGUMENT

1. Taxpayer claims that an alleged overpayment on her 1944 estimated tax should be applied against her 1945 tax liability. Taxpayer's income tax returns for both years were delinquently filed, and subsequent to receipt the Commissioner determined a deficiency for each year. Taxpayer having petitioned for review for only the year 1945, the Tax Court correctly held that it was without jurisdiction to consider an overpayment for a different year (1944) for which the taxpayer has not petitioned for review of the Commissioner's deficiency determination. Its decision is in accord with the applicable provisions of the Internal Revenue Code, and the controlling decisions.

2. The record fully supports the Tax Court's determination that taxpayer is subject to the penalty prescribed in Section 291(a) of the Internal Revenue Code of 1939 for delinquent filing of tax returns. Taxpayer claims she had "reasonable cause" for not filing timely returns, in that she relied upon her accountant. This presents a question of fact for the Tax Court, and the evidence clearly warrants its inference that taxpayer was well aware of her duty to file timely returns and did not rely upon her ac-

countant. Moreover, taxpayer has failed to establish that the person holding himself out as an accountant was a competent tax advisor, so as to justify reliance upon his advice.

## ARGUMENT

### I

**The Tax Court Correctly Decided That It Was Without Jurisdiction To Consider Whether Taxpayer Overpaid Her 1944 Income Tax, Since Taxpayer Failed To Petition the Tax Court for Review of the Commissioner's Deficiency Determination for 1944 and Sought Review Only of the Deficiency Determination for 1945**

Taxpayer filed a declaration of estimated tax for 1944 showing a tax liability of \$2,473 which she paid in four equal installments, the last payment dated January 4, 1945. Taxpayer failed to file an estimate for 1945. (R. 29.) Taxpayer also failed to timely file her income tax returns for 1944 and 1945. The 1944 and 1945 returns were delinquently filed on June 30, 1952, together with returns for other taxable years. (R. 27.) The Commissioner of Internal Revenue issued a deficiency determination for taxable years 1944 and 1945 together with two other years not in issue. (R. 11.) In her petition to the Tax Court, taxpayer only disputed the deficiency determinations for taxable year 1945 and another year not before this Court. (R. 5-8, 33-36.) The petition further requested that the alleged overpayment of estimated tax for 1944 be applied against the tax for 1945. (R. 35; Exs. A, B.) The Tax Court held, correctly we submit, that it lacked jurisdiction

to pass upon this question. (R. 97-100.)<sup>1</sup>

The Tax Court is specifically limited as to its jurisdiction over disputes between a taxpayer and the Commissioner. Prior to obtaining jurisdiction there must be a notice of deficiency sent to the taxpayer by the Commissioner, and a petition filed within requisite time by the taxpayer to the Tax Court for a redetermination of the deficiency. Section 272(a)(1), Internal Revenue Code of 1939. (Appendix, *infra*.) A failure by the taxpayer to file a petition with the Tax Court deprives the latter of jurisdiction for that year and permits assessment. Section 272(c), Internal Revenue Code of 1939. (Appendix, *infra*.) When the Tax Court does not have jurisdiction to redetermine a deficiency of a particular year, it also is without jurisdiction to determine whether taxes have been overpaid in that particular year. This is stated most clearly in Section 272(g) of the 1939 Code thusly (Appendix, *infra*):<sup>2</sup>

(g) *Jurisdiction Over Other Taxable Years.*

—The Tax Court in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other

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<sup>1</sup> The Commissioner applied part of the alleged overpayment for 1944 as an offset against the conceded deficiency for *that* year. (R. 97.) In the event that this Court should disagree with the decision below, and hold that the amount may be offset against the 1945 deficiency, then the offset allowed against the 1944 tax must be expunged in order to prevent duplicatory credits for the same payment.

<sup>2</sup> Almost identical language appears in Section 6214(b) of the Internal Revenue Code of 1954. (26 U.S.C. 1952 ed., Supp. II, Sec. 6214.)

taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid.

The Tax Court's lack of jurisdiction to determine overpayments for years for which taxpayer fails to file a petition for review of the Commissioner's deficiency determination is a well established principle of law. *Commissioner v. Gooch Co.*, 320 U.S. 418; *Glowinski v. Commissioner*, 243 F. 2d 635 (C.A. D.C.); *Fisher v. Commissioner*, 149 F. 2d 540 (C.A. 7th); *Gillespie Trust v. Commissioner*, 21 T.C. 739; *John R. Thompson Co. v. Commissioner*, 10 B.T.A. 57; *Gress Manufacturing Co. v. Commissioner*, 3 B.T.A. 977. In the *Gooch* case, *supra*, the Court said (p. 420):

The Board is confined to a determination of the amount of deficiency or overpayment for the particular tax year as to which the Commissioner determines a deficiency and as to which the taxpayer seeks a review of the deficiency assessment.

Applying the aforementioned rules of law to the instant case it becomes obvious that the Tax Court was correct in declining jurisdiction to decide whether there had been an overpayment for a year in which taxpayer had failed to petition for redetermination of the deficiency. Although the Commissioner had issued deficiency notices for taxable years 1944 and 1945, taxpayer had petitioned the Tax Court to review only the latter year. (R. 5-18, 33-36.) Tax-



payer now wishes to offset an alleged overpayment in year 1944 against the deficiency determination of 1945. The specific provision of the Internal Revenue Code regarding this situation and the cases concerned with it positively deny jurisdiction to the Tax Court to determine an overpayment for a year in which the taxpayer has not petitioned for review of the Commissioner's deficiency determination.

Taxpayer mistakenly relied upon *Repetti v. Jamison*, 239 F. 2d 901 (C.A. 9th). This Court in affirming the lower court specifically stated (p. 902) that it was not expressing an opinion as to the jurisdiction of any other court or body. Indeed, the issue there was far removed from the issue here. The Director was there attempting (under Section 272 (f)) to assess and collect an asserted tax without first sending a deficiency notice and affording the taxpayer an opportunity for a Tax Court review, on the theory that crediting a prior year's overpayment of estimated tax against a current year's tax liability was a "mathematical error". The question of whether the Tax Court had jurisdiction to decide an overpayment for a year in which a deficiency notice had been issued, and with respect to which taxpayer had failed to dispute the Commissioner's determination, was not decided. The Court merely held that the Commissioner could not avoid the issuance of a deficiency notice by a direct assessment for the year then in question.

The Commissioner's position in the instant case is further buttressed by the clear language of related sections of the 1939 Internal Revenue Code.



Section 322(c) and (d) (Appendix, *infra*) provides for the effect to be given overpayments, credits, or refunds. It shows that overpayments can be determined by the Tax Court only for the year for which a deficiency was determined by the Commissioner and questioned by the taxpayer by a petition for review to the Tax Court.

Taxpayer's contention (Br. 9-14) that the statute of limitations for claiming refunds of tax overpayments (Internal Revenue Code of 1939, Section 322 (b)), and for instituting suit for refund (Section 3772(a)), had not run with respect to the claimed overpayment for 1944 is beside the issue. The question here is not whether a suit for refund was or could have been timely instituted against the District Director or the United States in a District Court or the Court of Claims,<sup>3</sup> but whether the Tax Court had jurisdiction to determine and apply an overpayment for one year (1944) in a proceeding for redetermination of a deficiency for a different year (1945). The Tax Court correctly held that it lacked such jurisdiction. In any event, even assuming *arguendo* that this case turns on whether a refund claim and suit for 1944 are barred by the statute of limitations, there

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<sup>3</sup> Where recovery of an alleged overpayment of tax is sought, the procedure is to file a claim for refund in the office of the District Director where the return was filed (Section 322(b) of the Internal Revenue Code of 1939), and if the claim is disallowed or not acted upon suit for refund may be brought in the United States District Court or the Court of Claims (Section 3772(a) of the Internal Revenue Code of 1939; 28 U.S.C., Sections 1340, 1346, 1491).

is no basis for taxpayer's assumption that the statutory period had not run. Since no timely return for 1944 was filed by taxpayer, the statutory period for claiming a refund expired two years after the payment was made. Section 322(b)(1), (2) and (4), and 322(d). In this case the tax was paid in four installments, the last one being January 4, 1945. (R. 29.) Taxpayer's delinquent returns requesting the alleged overpayment to be credited to the 1945 tax were filed on June 30, 1952. (R. 29, 35.) This is far beyond the period of limitation.<sup>4</sup>

## II

### **The Record Warrants the Tax Court's Determination That Taxpayer's Failure To File Timely Income Tax Returns Was Not Due To Reasonable Cause**

The Commissioner determined that taxpayer was subject to additions to tax for taxable years 1945, 1946, 1947, 1948 and 1951 for failure to file timely returns. (R. 93-94.) The pertinent Code provision relating to this matter is Section 291(a) of the 1939

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<sup>4</sup> In *Garvin v. United States*, 111 F. Supp. 265 (C. Cls.), cited by taxpayer, the court held that a taxpayer who had earnings withheld for taxable years 1945, 1946, and 1947, and who had failed to file income tax returns or claims for refunds until June 1, 1951, was barred from recovery by the three-year statute of limitations. Taxpayer states that this case stands alone and cites three cases to support her position (*Rosenman v. United States*, 323 U.S. 658; *United States v. Dubuque Packing Co.*, 233 F. 2d 453 (C.A. 8th); *Thomas v. Mercantile Nat. Bank at Dallas*, 204 F. 2d 943 (C.A. 5th)), none of which is in point on the facts or issue here presented.

Internal Revenue Code (Appendix, *infra*) which imposes the penalty for failure to file a return on time unless the failure is "due to reasonable cause and not to wilful neglect." Whether the failure is due to "reasonable cause" presents a question of fact for the trial court, whose determination should not be disturbed unless clearly erroneous. *Commissioner v. Lane-Wells Co.*, 321 U.S. 219, 225; *Coates v. Commissioner*, 234 F. 2d 459 (C.A. 8th). The Tax Court found that taxpayer was subject to the penalty for failure to file timely income tax returns as determined by the Commissioner (R. 101-102), and we submit that its finding is amply supported by the record.

Taxpayer claims (Br. 16-22) that she relied completely upon her accountant to prepare and file the returns, and that the fault for the delinquent filing was attributable to him. The claim is without substance.

To begin with, as the Tax Court pointed out (R. 101-102), it was not in the least convinced that taxpayer relied upon her accountant. According to her own testimony, it was her practice to take the initiative in calling upon the accountant for the preparation of returns, and she offered no explanation whatever for her failure even to file a declaration of estimated tax for 1945 and 1947, although her accountant delivered the estimates to her. The Tax Court bases its conclusion in part upon its appraisal of the credibility of the witnesses, including taxpayer, and upon review due regard should be given to this

factor.<sup>5</sup> The testimony offered at the trial definitely supports the Tax Court's conclusion that taxpayer did not actually rely upon her accountant. Taxpayer testified that she would telephone the accountant for the purpose of having him prepare her returns. (R. 61-62.) The accountant testified that he would always leave the returns with the taxpayer for her to file and pay. (R. 68-69.) He further testified, when called as a witness for the taxpayer, that he prepared and left the 1945 Declaration of Estimated Tax with the taxpayer for her to file. (R. 71.) As the court noted, the 1945 Declaration of Estimated Tax was never filed. (R. 101-102.)

The taxpayer had been filing returns for many years prior to the first year for which additions to tax have been imposed, and had been contacting the accountant to prepare the returns. (R. 66-71.) With her prior knowledge and awareness of the necessity for filing returns on time, taxpayer is hardly in a position now to claim she had a "reasonable cause" for the delinquent filing due to reliance upon the accountant. *J. K. McAlpine Land & D. Co. v. Commissioner*, 126 F. 2d 163 (C.A. 9th); *Lee v. Commissioner*, 227 F. 2d 181 (C.A. 5th), certiorari de-

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<sup>5</sup> *United States v. Gypsum Co.*, 333 U.S. 364, rehearing denied, 333 U.S. 869; *National Brass Works v. Commissioner*, 205 F. 2d 104 (C.A. 9th); *Ferrando v. United States*, 245 F. 2d 582 (C.A. 9th); *Staudt v. Commissioner*, 216 F. 2d 610 (C.A. 4th); *Hague Estate v. Commissioner*, 132 F. 2d 775 (C.A. 2d), certiorari denied, 318 U.S. 787; Rule 52(a), Federal Rules of Civil Procedure; Section 7482(a) of the Internal Revenue Code of 1954 (Appendix, *infra*) (formerly Section 1141(a) of the 1939 Code).

nied, 351 U.S. 982; *deBelaieff v. Commissioner*, decided December 12, 1956 (1956 P-H T.C. Memorandum Decisions, par. 56,273); *Fazio v. Commissioner*, decided December 9, 1953 (1953 P-H T.C. Memorandum Decisions, par. 53,397).

Furthermore, even assuming (contrary to the Tax Court's finding) that taxpayer did rely upon the accountant to file her returns, there is no evidence that her reliance was well placed, so as to qualify as "reasonable cause" for the failure to file on time. While the Tax Court deemed it unnecessary to express an opinion as to the qualifications of the accountant to render expert tax advice (R. 101), the record shows that they were not such as to justify reliance upon his advice. The accountant admittedly was neither a certified public accountant, nor even a licensed public accountant although California required the licensing of public accountants. (R. 65-66.) If a taxpayer is to escape the provisions of Section 291 by simply turning over all financial matters to his accountant, reliance must in any event be placed in a competent tax advisor. *Bouche v. Commissioner*, 18 T.C. 144; *Coates v. Commissioner*, 234 F. 2d 459 (C.A. 8th); *Potter v. Commissioner*, 27 T.C. 200; *Brown v. United States*, (S.D. Fla.), decided May 25, 1956 (1956 P-H, par. 72,703).



CONCLUSION

The decision of the Tax Court is correct and should be affirmed.

Respectfully submitted,

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FEBRUARY, 1958.



## APPENDIX

## Internal Revenue Code of 1939:

## SEC. 272. PROCEDURE IN GENERAL.

(a) (1) [As amended by Sec. 168(a), Revenue Act of 1942, c. 619, 56 Stat. 798, and Sec. 203 (a), Act of December 29, 1945, c. 652, 59 Stat. 669] *Petition to Tax Court*.—If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this chapter, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within ninety days after such notice is mailed (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the ninetieth day), the taxpayer may file a petition with the Tax Court or a redetermination of the deficiency. No assessment of a deficiency in respect of the tax imposed by this chapter and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such ninety-day period, nor, if a petition has been filed with the Tax Court, until the decision of the Tax Court has become final. Notwithstanding the provisions of section 3653(a) the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court. In the case of a joint return filed by the husband and wife such notice of deficiency may be a single joint notice, except that if the Commissioner has been notified by either spouse that separate residences have been established, then, in lieu of the

single joint notice, duplicate originals of the joint notice must be sent by registered mail to each spouse at his last known address. If the notice is addressed to a person outside the States of the Union and the District of Columbia, the period specified in this paragraph shall be one hundred and fifty days in lieu of ninety days.

\* \* \* \*

(c) *Failure to File Petition*.—If the taxpayer does not file a petition with the Tax Court within the time prescribed in subsection (a) of this section, the deficiency, notice of which has been mailed to the taxpayer, shall be assessed, and shall be paid upon notice and demand from the collector.

\* \* \* \*

(g) *Jurisdiction Over Other Taxable Years*.—The Tax Court in redetermining a deficiency in respect of any taxable year shall consider such facts with relation to the taxes for other taxable years as may be necessary correctly to redetermine the amount of such deficiency, but in so doing shall have no jurisdiction to determine whether or not the tax for any other taxable year has been overpaid or underpaid.

\* \* \* \*

(26 U.S.C. 1952 ed., Sec. 272.)

SEC. 291. [As amended by Sec. 172(f)(4), Revenue Act of 1942, *supra*]. FAILURE TO FILE RETURN.

(a) In case of any failure to make and file return required by this chapter, within the time prescribed by law or prescribed by the Commissioner in pursuance of law, unless it is shown

that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the tax: 5 per centum if the failure is for not more than thirty days with an additional 5 per centum for each additional thirty days or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate. The amount so added to any tax shall be collected at the same time and in the same manner and as a part of the tax unless the tax has been paid before the discovery of the neglect, in which case the amount so added shall be collected in the same manner as the tax. The amount added to the tax under this section shall be in lieu of the 25 per centum addition to the tax provided in section 3612(d) (1) :

\* \* \* \*

(26 U.S.C. 1952 ed., Sec. 291.)

## SEC. 322. REFUNDS AND CREDITS.

\* \* \* \*

(c) *Effect of Petition to Tax Court* of the United States.—If the Commissioner has mailed to the taxpayer a notice of deficiency under section 272(a) and if the taxpayer files a petition with the Tax Court within the time prescribed in such subsection, no credit or refund in respect of the tax for the taxable year in respect of which the Commissioner has determined the deficiency shall be allowed or made and no suit by the taxpayer for the recovery of any part of such tax shall be instituted in any court except—

- (1) As to overpayments determined by a decision of the Tax Court which has become final; and

(2) As to any amount collected in excess of an amount computed in accordance with the decision of the Tax Court which has become final; and

(3) As to any amount collected after the period of limitation upon the beginning of distraint or a proceeding in court for collection has expired; but in any such claim for credit or refund or in any such suit for refund the decision of the Tax Court which has become final, as to whether such period has expired before the notice of deficiency was mailed, shall be conclusive.

(d) [As amended by Sec. 169(b), Revenue Act of 1942, *supra*; Sec. 14(d), Individual Income Tax Act of 1944, c. 210, 58 Stat. 231; and Sec. 5(c), Tax Adjustment Act of 1945, c. 340, 59 Stat. 517] *Overpayment Found by Tax Court*.—If the Tax Court finds that there is no deficiency and further finds that the taxpayer has made an overpayment of tax in respect of the taxable year in respect of which the Commissioner determined the deficiency, or finds that there is a deficiency but that the taxpayer has made an overpayment of tax in respect of such taxable year, the Tax Court shall have jurisdiction to determine the amount of such overpayment, and such amount shall, when the decision of the Tax Court has become final, be credited or refunded to the taxpayer. No such credit or refund shall be made of any portion of the tax unless the Tax Court determines as part of its decision (1) that such portion was paid (A) within two years before the filing of the claim, the mailing of the notice of deficiency, or the execution of an agreement by both the Commis-

sioner and the taxpayer pursuant to section 276(b) to extent beyond the time prescribed in section 275 the time within which the Commissioner might assess the tax, whichever is earliest, or (B) within three years before the filing of the claim, the mailing of the notice of deficiency, or the execution of the agreement, whichever is earliest, if the claim was filed, the notice of deficiency mailed, or the agreement executed within three years from the time the return was filed by the taxpayer, or (C) after the execution of such an agreement and before the expiration of the period within which the Commissioner might make an assessment pursuant to such agreement or any extension thereof, or (D) after the mailing of the notice of deficiency; or (2), if such portion was not paid within the period described in clause (1), but the notice of deficiency was mailed within seven years from the time prescribed for the filing of the return, or a claim described in subsection (b) (5) was filed, that such portion does not exceed the amount of the overpayment attributable to the deductibility of items described in subsection (b) (5); or (3), if such portion was not paid within the period described in clause (1), but the notice of deficiency was mailed within the period prescribed in subsection (b) (6) for the filing of a claim for credit or refund of an overpayment attributable to a carry-back, or such a claim was filed, that such portion does not exceed the amount of the overpayment attributable to a carry-back.

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## Internal Revenue Code of 1954:

## SEC. 7482. COURTS OF REVIEW.

(a) *Jurisdiction*.—The United States Courts of Appeals shall have exclusive jurisdiction to review the decisions of the Tax Court, except as provided in section 1254 of Title 28 of the United States Code, in the same manner and to the same extent as decisions of the district courts in civil actions tried without a jury; and the judgment of any such court shall be final, except that it shall be subject to review by the Supreme Court of the United States upon certiorari, in the manner provided in section 1254 of Title 28 of the United States Code  
(26 U.S.C. 1952 ed., Supp. II, Sec. 7482.)